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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 17, 1999

Via Hand Delivery

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Universal Service Contribution Requirements - Petition for Partial Waiver

Dear Ms. Salas:

On behalf of Minimum Rate Pricing, Inc., enclosed for filing is the original and five copies of a Petition for Partial Waiver of the Universal Service Contribution Requirements. Please return one file-stamped copy to us via the courier who is delivering this package.

If you have any questions, please call me at (202) 861-0870.

Sincerely,

Paul M. Breakman

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Minimum Rate Pricing, Inc.	)	File No. CC-99-______
	)	
PETITION FOR PARTIAL WAIVER OF THE UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS UNDER SECTIONS 54.703, 54.709 AND 54.711 OF THE COMMISSIONS RULES	)	CC Docket No. 96-45

To: The Common Carrier Bureau
Universal Service Branch

PETITION FOR PARTIAL WAIVER

Pursuant to 47 C.F.R. § 1.3, Minimum Rate Pricing, Inc. ("MRP"), by its attorneys, hereby petitions the Federal Communications Commission ("Commission" or "FCC") to grant MRP a waiver from the regulations requiring application of the Universal Service Worksheet, FCC Form 457, in order to calculate MRP's Universal Service Fund ("USF") contribution for 1999. Specifically, MRP seeks relief from the universal service assessment methodology that bases current year universal service contributions on revenues from the previous year, pursuant to the Commission's *Report and Order*[1] and to the Code of Federal Regulations, Part 47, Sections 54.703, 54.709 and 54.711.

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service, Errata,* CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *consolidated appeals pending sub nom Texas Office of Public Utility Counsel v. FCC and USA*, No. 97-60421 (5th Cir.).

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I. Background

MRP is a New Jersey corporation with its headquarters in Cedar Grove, New Jersey. The company is a non-facilities based reseller of intrastate and interstate long distance telecommunications services. As a retailer of long distance telecommunications services, MRP is subject to Section 254(d) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), which requires entities to contribute to universal service. The Commission's Universal Service Order of May 8, 1997, established that all telecommunications carriers that provide interstate telecommunications services and certain other providers of interstate telecommunications must contribute to support universal service.[2] As codified, the Commission's rules, 47 C.F.R.§§ 54.703, 54.709, and 54.711, require any entity that provides interstate telecommunications service contribute to the universal service programs on the basis of its end-user telecommunications revenues as calculated using the entity's prior year revenue. The intent of the Commission in creating the USF was to provide for funding for programs supporting schools, libraries and rural health providers on an equitable, nondiscriminatory and competitively neutral basis. The impact on MRP of the current USF contribution assessment accomplishes none of these goals.

II. Discussion

Pursuant to Section 1.3 of the Commission's Rules, the Commission may waive any provision of its rules on its own motion or on petition if good cause is shown.[3] The Commission

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[2]*See id.*

[3]47 C.F.R. § 1.3.

may exercise its general discretion to waive a rule where the particular facts make strict compliance with the rule inconsistent with the public interest.[4] Additionally, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[5] In fact, the Commission has an "obligation to seek out the 'public interest' in particular, individualized cases."[6] Waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[7] MRP's present situation clearly meets these requirements.

Special circumstances exist in this case because MRP will suffer extreme and unwarranted financial hardship as a result of the application of the current universal service assessment mechanism. In cases in which a telecommunications service provider's revenues increase from year to year, or remain stagnant, the adopted method for calculating the universal service assessment produces satisfactory results. However, MRP's business and end-user revenues have declined dramatically over the past twelve months to the extent that application of the rule's universal service assessment mechanisms would be inequitable, discriminatory and anticompetitive.

Bankruptcy: Pre-Petition Assessment

On February 26, 1999, MRP filed for relief under Chapter 11 of the Bankruptcy Code

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[4]*Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164 (D.C. Cir. 1990).

[5]*WAIT Radio,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972).

[6]*Id.*

[7]*Northeast Cellular,* 897 F.2d at 1166.

(petition for reorganization) with the United States Bankruptcy Court for the District of New Jersey, Newark Division.[8] MRP's USF obligations prior to that date are now subject to the jurisdiction of that Court.

Bankruptcy: Post-Petition Assessment

For the period of February 27, 1999 forward, MRP has experienced more than a one-third decrease in end-user telecommunication revenue, as compared to the same period in 1998. Thus, basing universal service contributions for the period of February 27, 1999 forward on 1998 revenues results in a contribution assessment against MRP that is both inequitable and discriminatory, and which results in an assessment that is grossly disproportionate to MRP's 1999 end-user telecommunication revenue. MRP, as a debtor-in-possession, is a "new entity" distinct from the pre-petition entity. Accordingly, the method of calculating contributions to be assessed against the debtor-in-possession may not be applicable, and MPR expressly reserves all rights.

The unique circumstances faced by MRP satisfy the "good cause" standard of Section 1.3 of the Commission's Rules, demonstrating that the public interest would be better served by partial waiver than by full application of the USF contribution requirement in the special circumstances present here.[9] It would neither be equitable nor in the public interest for the Commission to require MRP to contribute in 1999 to the USF based on its 1998 revenues. Such a strict application of the rules threatens the viability of MRP's already struggling business and

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[8] *See attached hereto, Exhibit A.*

[9] *See supra, footnotes 4 and 5.*

detrimentally affects its competitive ability to provide telecommunications services. This type of requirement violates the Commission's principles of competitive neutrality.

Section 254(d) of the Act required the Commission to establish a "specific, predictable and sufficient mechanism" under which entities of interstate telecommunications would contribute to the USF. However, MRP hopes that the Commission will acknowledge the importance of flexibility in application of its rules and the need for relief from extreme and untoward consequences of the assessment program's initial implementation.

III. Conclusion

In the face of the growing trend toward consolidation within the telecommunications industry, MRP asks that the Commission consider the adverse and unduly harsh effects strict application of its rules will have in the unique circumstances presented here, and recognize the direct, quantifiable and substantial consequences for MRP's continued viability as a competitive provider of telecommunications services if MRP's request is not granted.

Wherefore, all of the foregoing reasons, MRP respectfully requests that the Commission grant MRP a waiver from application of the universal service worksheet and permit MRP to contribute to the Universal Service Fund based on actual 1999, as opposed to 1998, revenues.

Respectfully submitted,

MINIMUM RATE PRICING, INC.

By: ______________________
Eric M. Rubin
Walter E. Diercks

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DECLARATION OF BRYAN ENGLE

I, Bryan Engle, do hereby declare as follows:

1. I am Chief Executive Officer of Minimum Rate Pricing, Inc. ("MRP"). I am submitting this Declaration in support of MRP's Petition for Partial Waiver of the Universal Service Contribution Requirements ("Petition").

2. I have reviewed MRP's Petition and hereby certify under penalty of perjury that the facts contained therein, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.

Executed on this 16th day of September, 1999.

Bryan Engle, CEO

CERTIFICATE OF SERVICE

I, Adrienne Bauer, hereby certify that on this 17th day of September 1999, I caused copies of the foregoing "Petition for Partial Waiver" to be sent to the following:

Via Hand Delivery

Richard Metzger
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Lisa Gelb
Chief
Accounting Policy Divivision
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Adrienne M. Bauer